

30.01.2025.
06.
Ct. No.237
Bd.

**CRR 3026 of 2016
with
IA No. CRAN 6 of 2025**

Jain Realty Limited & Ors.
-vs-
State of West Bengal & Ors.

Mr. Ayan Bhattacharya
Mr. Riju Ghosh
Ms. Vartika Pandey
Mr. Swagat David
Ms. Ipsita Ghosh

.....for the petitioners.

Affidavit of service filed by the petitioners is taken on record. Opposite parties are not represented.

This application has been preferred taking exception of the proceeding being C.S. 27190 of 2015.

Petitioners contended that the Trial Court took cognizance in respect of offences by an order dated 5th August, 2015 under sections 409/420/467/468/120B/34 of the Indian Penal Code and under sections 138/141 of the Negotiable Instruments Act against the petitioners. Thereafter one witness on behalf of the complainant filed an Affidavit-in-Chief and on the basis of said Affidavit-in-Chief learned court below issued process under the above-mentioned sections against the petitioners/accused persons.

Mr. Bhattacharya, learned counsel appearing on behalf of the petitioners relying upon a judgment passed by a coordinate Bench of this Court reported in **2023(1)E.Cr.N (CAL) 356, (Rupayan Bhattacharya -vs- The State of West**

Bengal) contended that before issuing process under section 204 in connection with any offence under the Indian Penal Code, it is mandatory that the Magistrate shall himself examine the complainant and/or the witnesses and record the substance of the same in writing and on being satisfied that there are sufficient ground for proceeding against the accused, the trial Magistrate is to issue process against the petitioners. In the present case such procedure has not been followed. The learned Trial Magistrate only on the basis of affidavit-in-chief and without applying judicial mind as to whether there are grounds for proceeding or not has issued the process mechanically, which is not sustainable in the eye of law.

In terms of section 200 of the Code, the complainant except the cases mentioned in proviso, is bound to make statement on oath as to how the offence has been committed and how the accused person is responsible therefor. I am of the considered view that mere calling upon the complainant to attest the complaint is not a sufficient compliance of section 200 of the Code. Therefore in the present context where the contents of the complaint are merely admitted to be correct on solemn affirmation by the complainant's witness, it cannot be said that this is an examination of the complainant, as required under the section. Even in cases difficulties, in appearing before the Court for examination, say in case of Pardanasin lady, such person can also be

examined by commission under section 284 of the code, since such examination as contemplated in section 200 is not a mere formality but for the satisfaction of the Court about existence of a prima facie case against the person accused of the offence and to ensure that such person is not harassed by false and vexatious complaints by issuance of process.

Having considered the facts and circumstances of the case and that it reflects from the order impugned dated 29th August, 2015 that on the basis of affidavit-in-chief and without examining the complainant or his witnesses on dock the Magistrate has issued the process against the petitioners, without even recording prima-facie satisfaction that there are grounds for proceeding against the accused, I find that the order impugned dated 29th August, 2015 and all subsequent orders are not sustainable in the eye of law.

In such view of the matter, the order dated 29th August, 2015 and all subsequent orders are hereby quashed.

The Court below is directed to examine the complainant and/or his witnesses, if any, under section 200 of the Code of Criminal Procedure and then on the basis of available materials on record to decide the next course of action either under the provisions of Chapter XV or under the Provision of Chapter XVI of the Code of Criminal Procedure, preferably within a period of thirty days from the date of communication of the order.

CRR 3026 of 2016 is accordingly disposed of. The application being CRAN 6 of 2025 also stands disposed of.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)